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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/073,184	02/13/2002	William M. Traut		5310
26936	7590	04/13/2005		
SHOEMAKER AND MATTARE, LTD 10 POST OFFICE ROAD - SUITE 110 SILVER SPRING, MD 20910			EXAMINER PHAM, MINH CHAU THI	
			ART UNIT	PAPER NUMBER

1724

DATE MAILED: 04/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No. 10/073,184	Applicant(s) TRAUT ET AL.	
	Examiner Minh-Chau T. Pham	Art Unit 1724	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 March 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 20-38 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 20-38 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 20-38 are again rejected under 35 U.S.C. 103(a) as being unpatentable over either the French reference (FR 2769850) or Oldham (4,649,677), in view of the German reference (DT 2617364).

The French reference discloses a filter made from activated carbon, received in a conduit (2) which is inserted at a point in the gas venting system of a septic tank. The conduit (2) containing the filter therein is sealingly attached to the septic gas vent piping (see Figs. 1, 4 and 5). Since the filter is contained within conduit (2), the filter is disposed in at least one aperture – the aperture of the conduit. The French reference further discloses a filter made from activated carbon, received in a conduit (2) which is inserted at a point in the gas venting system of a septic tank. The conduit (2) containing the filter therein is sealingly attached to the septic gas vent piping (see Figs. 1, 4 and 5). Since the filter is contained within conduit (2), the filter is disposed in at least one aperture – the aperture of the conduit. Claim 25 calls for the conduit having different sizes and being misaligned. It would have been obvious to a person having ordinary skill in the art at the time the invention was made to modify the conduit to have different sizes or being misaligned since such modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. In re Rose, 105 USPQ 237 (CCPA 1955). Oldham discloses a septic tank (40) with an overhead pipe (46) through which methane gas

transported, pipe (46) connects to the horizontal pipe (see horizontal pipe in Fig. 11 which connects to pipe (46) which then transport the methane gas through filter (48). The filter (48) is contained in the horizontal pipe through which the gas flows so it would meet the disposed in at least one aperture limitation, i.e. the pipe aperture. Claims 20-38 differ from the disclosure of either the French reference or Oldham in that the leg is configured for mounting a fixture thereon. The German reference discloses a vent for a septic system including a conduit to convey gas with a downward facing aperture (see 3 in Fig. 2) comprising a leg configured to mount on, conceal a portion of and convey gas from the conduit wherein the leg is configured for mounting a fixture thereon. The German reference further discloses the leg closely or sealingly receives the conduit and configured to convey gas from the conduit to the passage, and a fixture mounted on the leg where the fixture is a statue or a garden ornament. It would have been obvious to a person having ordinary skill in the art at the time the invention was made to provide a vent for a septic system with a mounted fixture thereon as taught by the German reference in the conduit of either the French reference or Oldham to provide an artificial landscaping device adapted to fit over the septic system covers or vents and look fully natural to an unsuspecting observer by blending into the landscaping.

Response to Amendment

Applicant's arguments filed on March 21, 2005 have been fully considered but they are not persuasive.

Applicant argues that the secondary German reference DT 2617364 does not disclose the leg or the "mushroom is not configured for mounting a fixture thereon". The

Examiner respectfully disagrees. The German reference clearly discloses a vent for a septic system including a conduit to convey gas with a downward facing aperture (see 3 in Fig. 2) comprising a leg configured to mount on, conceal a portion of and convey gas from the conduit wherein the leg is configured for mounting a fixture thereon. The German reference shows the leg and the "mushroom" integrated in one element and does not show the leg and the "mushroom" as two separate items. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the leg and the "mushroom" separate, since it has been held that constructing a formerly integral structure in various elements involves only routine skill in the art. See Nerwin v. Erlichman, 168 USPQ 177, 179.

Applicant's arguments with respect to claims 20-38 have been thoroughly considered but are moot in view of the rejection as discussed above.


THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Minh-Chau T. Pham whose telephone number is (571) 272-1163. The examiner can normally be reached on Mon/Tues/Thur/Fri 7:00 am - 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Duane Smith can be reached on (571) 272-1166. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Minh-Chau Pham
Patent Examiner
Art Unit: 1724
April 8, 2005

DUANE SMITH
PRIMARY EXAMINER


4-11-05